

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WOLFGANG HEROLD

Appeal No. 97-2644
Application 08/381,531¹

ON BRIEF

Before ABRAMS, FRANKFORT and STAAB, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

¹ Application for patent filed January 31, 1995.

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DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 3, 5 through 13 and 15 through 22. Claim 23, the only other claim remaining in the application, stands allowed. Claims 4 and 14 have been canceled. On page 3 of the examiner's answer (Paper No. 16), it is indicated that the rejection of the claims on appeal under 35 U.S.C. § 112, second paragraph, has been withdrawn and that claims 12 and 22 are now objected to, but would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims. Accordingly, only claims 1 through 3, 5 through 11, 13 and 15 through 21 remain for our consideration on appeal.

Appellant's invention relates to a connecting pin adapted for use in conjunction with belt fasteners of the type having intermeshed coupling eyelets. See, for example, Figure

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1 of the application drawings, wherein the conveyor belt sections (4) and (5) are connected together by a connecting pin (1) of appellant's design which is passed through intermeshed coupling eyelets (e.g., 10 and 11). A copy of representative independent claim 1 on appeal appears in Appendix A to appellant's brief (Paper No. 15).

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Stolz	4,023,239	May 17,
1977		
Schick	4,641,398	Feb. 10,
1987		

Claims 1 through 3, 5, 13, 15 and 17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Schick.

Claims 6, 7 and 16 stand rejected under 35 U.S.C. § 103 as being unpatentable over Schick.

Claims 8 through 11 and 18 through 21 stand rejected under 35 U.S.C. § 103 as being unpatentable over Schick in view of Stolz.

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Rather than attempt to reiterate the examiner's full commentary with regard to the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellant regarding the rejections, we make reference to the examiner's answer (Paper No. 16, mailed February 19, 1997) for the examiner's reasoning in support of the rejections, and to appellant's brief (Paper No. 15, filed December 2, 1996) for appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we have made the determination that none of the examiner's rejections will be sustained. Our reasoning in support of this determination follows.

Looking first at the examiner's rejection under

§ 102(b), we note that independent claim 1 defines the connecting pin as comprising, inter alia, a plurality of core elements, with each of said core elements

being rigid, and having a cylindrical shape extending along its length measured between opposite ends thereof, which length is greater than the distance between at least two adjacent ones of the coupling eyelets.

Claim 1 further sets forth that the connecting pin includes at least one casing element in which said core elements are closely received and retained in an end-to-end relationship "to position each of said core elements through more than two adjacent ones of the coupling eyelets" (emphasis added).

Looking at Figures 1 and 2 of the application drawings and at appellant's specification (e.g., pages 1 through 3), we observe that the core elements or pieces (2) are described as being made of "high strength solid material" and as being "cylindrical in shape." In addition, it is appellant's stated intention that each of the core elements or pieces (2)

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be "long enough to extend through a minimum of more than two coupling eyelets" (page 1, lines 32-33) and/or have a length that "is selected in such a manner that they always extend through more than two adjacent ones of the coupling eyelets 10 and 11" (page 3, lines 17-19). With this as guidance, we look to the language of independent claim 1 on appeal to understand its metes and bounds.

As noted above, the first clause of appellant's claim 1 sets forth a plurality of core elements, and then defines those elements as each "being rigid, and having a cylindrical shape extending along its length measured between opposite ends thereof." We understand this claim language, in light of appellant's disclosure, to require that each of the core elements have a cylindrical shape over the entire length of the core element measured from end-to-end, for example, as seen in appellant's drawing Figures 1 and 2. This clause of claim 1 also sets forth

that the length of each of the core elements "is greater than the distance between at least two adjacent ones of the coupling eyelets." Given the guidance of appellant's specification referred to above and the requirements of the recitations found in the second clause of claim 1 on appeal, we understand that the length of each of the core elements is such as to allow each core element to extend through more than two adjacent ones of the coupling eyelets. In the language of the specification, the core elements are each long enough to extend through "a minimum of more than two coupling eyelets" (page 1) or each have a length so that they "always extend through more than two adjacent ones of the coupling eyelets" (page 3).

The examiner contends (answer, pages 5-6 and 8-9) that the subject matter of appellant's independent claim 1 is anticipated under 35 U.S.C. § 102(b) by the connecting pin seen in Figure 10 of Schick, wherein each of the rigid core elements

(1 or 1c) of the connecting pin is configured as seen in Figure 6 of the patent. We do not agree. It is an essential prerequisite that the scope and content of the claimed subject matter be fully understood prior to the application of prior art thereto. Given our understanding and interpretation of the scope and content of

appellant's claim 1 on appeal as discussed supra, it is clear to us that the connecting pin of Schick does not include a plurality of core elements which are each shaped and configured as required in claim 1 on appeal. Each of the core elements (1) or (1c) of Schick (Figures 1, 4, 6 and 10) is clearly not of a cylindrical shape along its entire length measured from end-to-end, as is required in appellant's claim 1 on appeal. The examiner's attempt (answer, pages 8-9 and Appendix A) to read one of the four segments of the core elements (1) of Schick as being responsive to each of the core elements defined and required in claim 1 on appeal is likewise totally unavailing. Accordingly, the examiner's rejection of claims 1 through 3, 5, 13, 15 and 17 under

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35 U.S.C. § 102(b) will not be sustained.

For the same reasons as indicated above, it is apparent that the examiner's rejection of dependent claims 6, 7 and 16 under 35 U.S.C. § 103 based solely on Schick will also not be sustained.

As for the examiner's rejection of claims 8 through 11 and 18 through 21 under 35 U.S.C. § 103 as being unpatentable over Schick in view of Stolz, we see nothing in the patent to

Stolz which in any way provides for the deficiencies of Schick as noted above. Thus, even if one of ordinary skill in the art were to consider combining the teachings of the applied patents in the manner urged by the examiner, a proposition which we consider to be highly questionable, the result would not be a connecting pin as now claimed by appellant in the claims before us on appeal. Accordingly, the examiner's

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rejection of claims 8 through 11 and 18 through 21 under 35 U.S.C. § 103 will not be sustained.

Appellant's brief, at pages 15 and 16, makes reference to a declaration by the inventor, Mr. Harold (attached to Paper No. 9, filed September 12, 1996). However, in view of our disposition of the anticipation and obviousness rejections above, we find no need to review this declaration. We note in passing that the record of this application is something less than the model of clarity with regard to whether this declaration was actually considered by the examiner or not. See, particularly, the advisory action (Paper No. 11, mailed September 19, 1996). The decision with regard to appellant's petition filed November 20, 1996 (Paper No. 14, mailed December 31, 1996), indicates that the declaration "was not formally considered by the examiner as to content."

Based on the foregoing, the decision of the examiner rejecting claims 1 through 3, 5, 13, 15 and 17 under 35 U.S.C. § 102(b) as anticipated by Schick, claims 6, 7, and 16 under

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35 U.S.C. § 103 as being unpatentable over Schick, and claims
8 through 11 and 18 through 21 under 35 U.S.C. § 103 as being
unpatentable over Schick in view of Stolz, is reversed.

REVERSED

	NEAL E. ABRAMS)	
	Administrative Patent Judge)	
)	
)	
)	BOARD OF
PATENT)	
	CHARLES E. FRANKFORT)	APPEALS AND
	Administrative Patent Judge)	INTERFER-
ENCES)	
)	
)	
	LAWRENCE J. STAAB)	
	Administrative Patent Judge)	

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